

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KEITH S. GARY,

Plaintiff,

v.

ORDER

ANNA YOUNG, LINDSAY WALKER,
RENEE SCHUELER, JON LITSCHER,
MICHAEL DITTMANN, and LUCAS WEBER,

18-cv-541-jdp

Defendants.

Defendants' counsel has notified the court that pro se plaintiff and prisoner Keith Gary has died. Dkt. 43. Gary was proceeding in this case on claims that correctional and health services staff at Columbia Correctional Institution repeatedly distributed the wrong medications to inmates.

Under Rule 25(a)(1) of Federal Rules of Civil Procedure, Gary's successors or representatives have 90 days after receiving notice of Gary's death to file a motion to be substituted as the plaintiff in this case. But the 90-day deadline does not begin running until defendants serve the notice of death on the successors or representatives. *See Atkins v. City of Chicago*, 547 F.3d 869, 870–74 (7th Cir. 2008). Defendants have not stated whether they have served notice on the proper party to be substituted in this case. The proper party is “the decedent’s successors (if the estate has been distributed) or personal representative ([if] it has not been).” *Id.* at 873. I will give defendants 30 days to identify the proper party to be substituted and then serve notice on that party. Once Gary's successors or representatives have been notified, they will have 90 days to file a motion for substitution.

One last note: There are several motions pending in this case, including defendants' motions for summary judgment and for sanctions, Dkt. 21 and Dkt. 38, and Gary's motion to compel and for discovery assistance, Dkt. 31 and Dkt. 35. It is not clear whether Gary's successors or representatives will continue litigating this case, but if they do, they will likely want an opportunity to review and respond to these motions. Under these circumstances, I will deny all of the pending motions without prejudice. If a new plaintiff is substituted for Gary, the court will set a scheduling conference and will discuss with the parties whether they wish to renew the motions.

ORDER

IT IS ORDERED that:

1. Defendants may have until March 3, 2020, to serve the proper party with notice of death and to file proof of service or show cause why they were unable to do so.
2. If defendants file proof of service, Gary's successors or personal representative will have 90 days to file a motion for substitution.
3. Defendants' motion for summary judgment, Dkt. 21, and motion for sanctions, Dkt. 38, are DENIED without prejudice.
4. Gary's motion to compel, Dkt. 31, and motion regarding discovery production, Dkt. 35, are DENIED without prejudice.

Entered February 4, 2020.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge